In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 298 of 2003(O&M)
Date of Decision: February 07, 2011

Rohtash

---Petitioner

versus

State of Haryana

---Respondent

Coram: HONBLE MR. JUSTICE GURDEV SINGH

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Present: Mr. Ashok Kumar Sharma, Advocate for
Mr. S.K.Garg Narwana, Advocate
for the petitioner

Mr.Shekhar Mudgal, Asstt. Advocate General, Haryana

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GURDEV SINGH, J.

The petitioner-accused has preferred this criminal revision against the judgment dated 4.2.2003 passed by Additional Sessions Judge, Jhajjar, vide which he dismissed the appeal preferred against the judgment dated 13.7.1999 passed by Judicial Magistrate Ist Class, Bahadurgarh, convicting the petitioner-accused for the offences under Sections 279 and 304-A IPC and sentencing him as under:-

Sr. No.	***Under Section***	***Sentence imposed***
1	279 IPC	To undergo simple imprisonment for period of six months
2	304-A IPC	To undergo simple imprisonment for period of one year

The facts, in brief, are that on 20.11.1996, at about 6-30 p.m., Rishi Raj, complainant, PW-3, along with Arun Kumar PW-2, was going to Sector-6, Bahadurgarh, in jeep bearing Registration No. DL 8C 2A 7449. When they reached near the bus stand of Jakhoda, the petitioner -accused came driving tractor, from the side of Bahadurgarh, rashly and negligently. While overtaking another tractor, he struck the same in one unknown person, who was standing by the side of the road. He did not stop the tractor and escaped from the spot. The unknown person, who had become injured, was put in the jeep by the complainant and was removed to PGI, Rohtak. On the way, they apprehended the accused and it was found that he was driving tractor bearing Registration No. HR 14 3054. In PGI, Rohtak, that unknown person was declared dead. Written information about the death of that person was sent to Police Station, Sadar Bahadurgarh, and on the receipt thereof, Raj Singh HC, PW-9 accompanied by the other police officials, came to PGI, Rohtak. At that place he recorded the statement of the complainant, Ex. P-1 and after recording the police proceedings, Ex. P-8, on the same, sent that to the police station, on the basis of which formal FIR Ex. P-5, was recorded against the accused under Sections 279 and 304-A IPC. He prepared the inquest report, Ex. P-5, in respect of the dead body and sent the same for post mortem examination. Then he proceeded to the place of occurrence and after inspecting the same, prepared the rough site plan, Ex. P-9, with correct marginal notes. He took in possession the tractor and Registration Certificate thereof, vide Memos, Ex. P-2 and P-4, respectively. The autopsy on the dead body was performed by Dr. Viney Kumar, PW-7, who found ante mortem injuries on the same and gave his opinion that the cause of death was as a result of shock and hemorrhage and that those injuries were sufficient to cause death in the ordinary course of nature. In the course of investigation, the accused was arrested and after completion thereof, the challan

was put in before the Judicial Magistrate Ist Class, Bahadurgarh, for the trial of the accused.

From the documents sent along with the police report, sufficient grounds were found by the JMIC for presuming that the accused committed the offences punishable under Sections 279 and 304-A IPC. He was charged accordingly, to which he pleaded not guilty and claimed trial. To prove his guilt, the prosecution examined Bishamber Dayal HC, PW-1, Arun Kumar, PW-2, Rishi Raj, complainant, PW-3, Sukhipal, PW-4, Randhir Singh, PW-5, Hari Singh ASI, PW-6, Dr. Vinay Kumar, PW-7, Maha Singh ASI, PW-8 and Raj Singh HC, PW-9. After the close of the prosecution evidence, accused was examined by the trial court and his statement was recorded under Section 313 Cr.P.C. The incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded that no such accident was caused by him and that he was falsely implicated in connivance with the driver of the jeep. He was called upon to enter on his defence but he did not produce any evidence in his defence. After going through the evidence, so produced on the record and hearing Assistant PP for the State and learned defence counsel for the accused, Judicial Magistrate Ist Class, convicted and sentenced the accused, as aforesaid.

I have heard learned counsel for both the sides.

Learned counsel for the petitioner, while making his submissions has reiterated the averments made in the petition. The accused has challenged his conviction and sentence by pleading in the revision petition that there was delay in the registration of the FIR and the trial court did not conform to the principles of criminal jurisprudence which require that burden of proving the guilt of the accused was upon the prosecution and that the material circumstances are ignored by the trial court while recording the conviction and that the trial court failed to take

cognizance of the contradictions in the statements of the prosecution witnesses and that the benefit of probation should have been allowed to the accused as he was the first offender.

It cannot be said that there is delay in lodging the FIR. The accident took place at 6.30 p.m. and immediately thereafter the injured/deceased was removed to the hospital, where he was declared having brought dead. It was only after the intimation was sent to the police station that Raj Singh HC, came to the hospital and recorded the statement of the complainant. The same purports to have been recorded at 1-00 a.m. i.e. Just after six hours and 30 minutes of the accident. The appreciation and reappraisal of the evidence is not admissible in this revision petition, unless it is found that the findings, so recorded by the trial court, are based upon no evidence or are perverse or illegal. The prosecution case was unfolded in the court by Rishi Raj, complainant, PW-3. He made a categorical statement that the accident was caused by the accused by driving the tractor rashly and negligently and that after the accident they had apprehended the accused with that tractor while they were removing the injured to the hospital. The identification of the accused stood proved by the categorical statement made in the court, which had been corroborated by the other witness; namely, Arun Kumar, PW-2. There is no material contradiction in their statements so as to make those statements unworthy of belief. The trial court recorded the finding of conviction of the accused only after it came to the conclusion that the guilt of the accused had been proved beyond any reasonable doubt. There was not such ignorance of principles of criminal jurisprudence by the trial court. There is no ground for interfering with the finding of conviction of the accused recorded by the trial court and upheld by the appellate court.

Admittedly, no evidence regarding the previous conviction was led against the accused by the prosecution and as such he was the first offender.

However, for the reasons, to be recorded in writing, the benefit of probation could have been refused to him even if he was entitled to such benefit. The detailed reasons were recorded by the trial court and this Court finds no reason to differ with that reasoning. The motor vehicular accidents are increasing day by day. Such like persons are to be dealt with deterrently. When a life has been lost and circumstances of driving are harsh, no compassion can be shown. I do not think it just and expedient to release the petitioner on probation.

There is no merit in this revision petition and the same is hereby dismissed. Petitioner be taken into custody to serve the remaining part of his sentence.

Records of the trial court be returned forthwith.

(GURDEV SINGH)
JUDGE

February 07, 2011
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